

LCI at 8. These upper and lower parameters are not “selected” by BellSouth, but are calculated based on actual results wherever data are available or are negotiated by CLECs as part of their interconnection agreements with BellSouth. See Stacy Performance Aff. ¶¶ 16-25.

ALTS incorrectly claims that BellSouth waits three months before investigating “problems” when they are revealed by performance data. ALTS at 10. In the event that the comparative data vary outside the control chart that BellSouth has established to monitor performance for three months, BellSouth undertakes a root cause analysis to determine the reason for the consistent variation. See Stacy Performance Aff. ¶ 23. This root cause analysis can only be meaningfully undertaken if problems are persistent, rather than based on an isolated incident, such as extreme weather which may distort results for one or two months. Id. However, BellSouth investigates all problems immediately; BellSouth’s root cause analysis is only the final step in BellSouth’s vigilant monitoring of its performance.

Faced with data that prove that BellSouth is providing nondiscriminatory interconnection and network access, commenters can only cling to their demands for additional measurements by raising the specter of “backslid[ing].” See ALTS at 11; DOJ at 32; Intermedia at 9. For these commenters, it is not enough that BellSouth’s performance measurements demonstrate that it operates in a nondiscriminatory manner at the present time, because “present data cannot detect backsliding in the future.” DOJ at 32. This argument fails to acknowledge that BellSouth has agreed to provide “[a]ll [present] measurements and associated data” to interested parties through BellSouth’s data warehouse. See Stacy Performance Aff. ¶ 15. BellSouth’s commitment to

provide its present measurements and data on an ongoing basis more than satisfactorily addresses concerns about backsliding.<sup>28</sup>

BellSouth's existing measurements confirm that BellSouth has provided CLECs with nondiscriminatory network interconnection and access that allows them to compete. Stacy Performance Reply Aff. ¶ 15. The Act requires no more. As the Eighth Circuit stated in another context, the Act "does not mandate that incumbent LECs cater to every desire of every requesting carrier." Iowa Utils Bd., 120 F.3d at 813. Only when the Commission firmly adopts this principle will CLECs' demands for expansion of the competitive checklist cease.

#### **E. Contract Service Arrangements**

AT&T and a few other parties seek to have this Commission effectively reopen the Louisiana PSC's determinations regarding resale pricing of services offered through contract service arrangements ("CSAs"). AT&T, moreover, simultaneously has asked the United States District Court to consider this same issue in two separate suits in Louisiana.<sup>29</sup> The Commission

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<sup>28</sup> Likewise, suggestions that BellSouth's performance measurements must contain "enforcement mechanisms," ALTS at 11, or "self-executing remedies," MCI at 47, ignore that the Act itself makes enforcement remedies available. Furthermore, enforcement of interconnection agreements is not within this Commission's jurisdiction. Iowa Utils Bd., 120 F.3d at 803-04. Any requirement of particular enforcement mechanisms would be outside the Commission's jurisdiction as well and would extend the competitive checklist. See 47 U.S.C. § 271(d)(4).

<sup>29</sup> See Complaint For Declaratory and Other Relief Under the Telecommunications Act of 1996, AT&T Communications of the South Central States, Inc. v. BellSouth Telecommunications, Inc., Louisiana Public Service Commission, et al., at 4, ¶ 11, 18-20, ¶¶ 57-61 (M.D. La. Dec. 8, 1997) (challenging arbitration); Complaint For Declaratory and Other Relief Under the Telecommunications Act of 1996, AT&T Communications of the South Central States, Inc. v. BellSouth Telecommunications, Inc., Louisiana Public Service Commission, et al., at 4, ¶ 11, 20, ¶¶ 62-66 (M.D. La. Dec. 8, 1997) (challenging approval of Statement).

should respect the Louisiana PSC's jurisdiction over this and other resale pricing issues, particularly given AT&T's decision to pursue direct review of the Louisiana PSC's decisions before a federal court.

All CLEC arguments regarding CSAs spring from a false premise that BellSouth could effectively prevent competitors from reselling the telecommunications services sold through individual CSAs. AT&T at 64. That posturing misrepresents the nature of CSAs and the policies of the Louisiana PSC. A CSA is simply a price negotiated with a particular customer (that is subject to competition) for telecommunications services that BellSouth makes separately available under its tariffs. Varner Reply Aff. ¶ 40. Under the Louisiana commission's orders, all of BellSouth's telecommunications services, including tariffed services that may also be included in a CSA, are available for resale at the 20.72 percent wholesale discount established pursuant to section 272(d)(3). Order No. U-22020 (Nov. 12, 1996) (App. C-2 at Tab 197); Compliance Order at 14. CLECs can resell all the telecommunications services in any BellSouth CSA — and thus the CSA itself, as a practical matter — by invoking the 20.72 percent discount. Varner Reply Aff. ¶ 41. For CSAs entered into after the date of the Louisiana PSC's AT&T Arbitration Order, moreover, CLECs have an additional, cumulative option not required by the 1996 Act — resale of the particular contract entered into by BellSouth at the negotiated rate, in lieu of the 20.72 percent wholesale discount. See BellSouth Br. at 66-69.

BellSouth's State-approved policies are perfectly consistent with the Commission's holding that there is "no general exemption from the wholesale requirement for promotional or discount service offerings made by incumbent LECs" Local Interconnection Order, 11 FCC Rcd

at 15975, ¶ 948. At issue is not whether BellSouth makes available to resellers the telecommunications services offered through CSAs, but rather whether BellSouth makes those services available at an appropriate discount. This is an issue for the Louisiana PSC, not the Commission. See Iowa Utils. Bd., 120 F.3d at 794-800.

Disputing that the state commissions possess such pricing authority, Sprint notes the Commission's jurisdiction to establish rules to prevent discriminatory conditions on resale. Sprint at 38. Yet this Commission has recognized that "the substance and specificity of rules concerning which discount and promotion restrictions may be applied to resellers in marketing their services to end users is a decision best left to state commissions." Local Interconnection Order, 11 FCC Rcd at 15971, ¶ 952; see 47 C.F.R. § 51.613(b) (permitting incumbent LEC to "impose a restriction [on resale] . . . if it proves to the state commission that the restriction is reasonable and nondiscriminatory"). Exercising its authority, the Louisiana PSC decided that BellSouth should make the services composing a CSA available for resale at both the resale rate for each component service and the CSA rate negotiated with an individual end user, but should not give resellers the windfall of cumulative discounts. The PSC explained that "[r]equiring BellSouth to offer already discounted CSAs for resale at wholesale prices would create an unfair advantage for AT&T." AT&T Arbitration at 4.

Efforts to have this Commission decree a double discount, instead of two alternative discounts, would not only impinge upon state authority over pricing, but also would sabotage facilities-based competition throughout Louisiana. BellSouth offers CSA discounts only where the potential for bypass of BellSouth's network makes BellSouth's tariffed rates unsustainable.

See BellSouth Br. at 66.<sup>30</sup> If resellers could automatically chop an additional 20.72 percent off of BellSouth's best offer, resellers would be able to steal business not only from BellSouth, but also from facilities-based CLECs. CLECs would not make investments in new facilities if they knew that resellers could come along and offer prices up to 20.72 percent below a competitive price. Congress's intent to promote "meaningful facilities-based competition" would be undermined. Conference Report at 148; see Michigan Order ¶ 387 (Congress "sought to ensure that all procompetitive entry strategies are available").

In this proceeding, CLECs themselves recognize that AT&T's demand for a double discount was wrong. Sprint, for example, suggests that because CSAs are already discounted below BellSouth's tariffed rates, "differential treatment" of CSAs may be "appropriate." Sprint at 38-39. Sprint suggests, however, that the Louisiana PSC should conduct a separate cost proceeding to set a wholesale rate for each individual CSA. Id.; see also AT&T at 62. Similarly, in an action filed by AT&T in federal court in Mississippi, this Commission suggested that the Mississippi Public Service Commission should examine avoided costs for each CSA to ensure that CLECs are not entitled to any additional discount beyond the greater of (1) the standard wholesale discount or (2) the CSA discount.<sup>31</sup>

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<sup>30</sup> AT&T's arguments that "BellSouth's SGAT provides it with unfettered discretion to use CSAs," AT&T at 63, ignores that BellSouth's tariffs, which must be approved by the Louisiana PSC, restrict use of CSAs.

<sup>31</sup> Memorandum of the Federal Communications Commission As Amicus Curiae, AT&T Communications of the South Central States, Inc. v. BellSouth Telecommunications, Inc., No. 3:97CV400WS, at 23 (S.D. Miss. Dec. 3, 1997).

The Commission's position as an amicus in Mississippi is not binding upon the Commission in this Louisiana-specific section 271 proceeding. And there are powerful reasons why the Commission should reassess its suggestion of CSA-specific state review. Quite unlike the Louisiana PSC's approach of giving CLECs their choice of a fixed 20.72 percent discount or the contract discount, such a disproportionately time-consuming and expensive process would have the precise consequence CLECs claim they fear — making CSA services effectively immune from resale. If each resale transaction required a new regulatory proceeding, such transactions would become prohibitively slow and costly to accomplish. In addition, as the South Carolina PSC has noted, it might be "impossible" from the state commission's perspective to determine "what additional discount, if any, is necessary to account for BellSouth's potential cost savings with respect to a particular CSA" for a particular customer. South Carolina PSC Comments at 10, CC Docket No. 97-208 (Oct. 17, 1997). Such an approach is neither required under the 1996 Act nor workable as a matter of pragmatic realities.

Turning to other objections to the Louisiana PSC's rulings on CSAs, AT&T complains that BellSouth will not make CSAs available for resale to customers other than the end-user for whom it was negotiated. AT&T at 59. Again, AT&T ignores that because a CSA is an individually tailored arrangement covering standard tariffed offerings, CSA services are available for resale to different end-users, and could be combined by a reseller to replicate the customer-specific CSA. Varner Reply Aff. ¶¶ 40-41. AT&T also overlooks the Louisiana PSC's "reasonable and nondiscriminatory" basis for not allowing resellers to re-write the customer-specific terms of a CSA. 47 C.F.R. § 51.613(b). The Louisiana PSC allows BellSouth to use

CSAs only to respond to a particular competitive threat; this limitation ensures that they do not generally supplant tariffed rates. If CSA prices were the starting point for generally available resale offerings where the predicate competitive threat does not exist, then the Louisiana PSC's effort to restrict the applicability of CSA pricing would be frustrated. Whereas BellSouth would be required to charge tariffed rates throughout the state generally, resellers would work off of a retail price that is not the price available to the customer at issue. The Louisiana PSC's effort to enforce tariffed rates wherever economically possible would be frustrated and, contrary to Congress's intent, wholesale rates would be divorced from the actual "retail rate charged" to the reseller's potential customer "for the telecommunications service requested." 47 U.S.C. § 252(d)(3); see also House Report at 72 ("the rate should reflect whether, and to what extent, the local dialtone service is subsidized by other services").

AT&T also complains about the Louisiana PSC's decision that CSAs executed before the PSC ruled on resale of CSAs (on January 28, 1997) are available to resellers only by applying the 20.72 percent resale discount to the included services. AT&T at 59.<sup>32</sup> Contrary to AT&T's assertion, AT&T at 61, this is indeed a pricing decision within the PSC's exclusive jurisdiction: the only issue is the level of the discount available to resellers for the included services. Far from being a "flat prohibition on entry," AT&T at 59, this decision merely limits CLECs to the usual avoided-cost wholesale discount guaranteed under the Act instead of giving them an

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<sup>32</sup> The Commission has supported this position in litigation in Mississippi. See Memorandum of the Federal Communications Commission As Amicus Curiae, AT&T Communications of the South Central States, Inc. v. BellSouth Telecom., Inc., No. 3:97CV400WS, at 14-18 (S.D. Miss. Dec. 3, 1997).

optional choice of discounts. Otherwise, BellSouth would have been held retroactively to have negotiated an optional wholesale rate when it entered into customer-specific CSAs, even though BellSouth then reasonably expected that the only resale discount would be general discount set pursuant to section 252(d).

AT&T further asserts that BellSouth should have to disclose the terms of its CSAs not only to the Louisiana PSC, but also to competitors (including the very CLECs whose entry gave rise to competitive bidding for the customer's business in the first place). AT&T at 60-61. Forcing competitors to share pricing information with one another is hardly a sensible way of promoting local competition. As the Supreme Court and this Commission have explained, consumers benefit when carriers are forced by competitive pressure to offer their best prices, rather than prices that are just low enough to come under a known price ceiling.<sup>33</sup>

Finally, AT&T takes a broad swipe at BellSouth's ability to use CSAs in the first place. During the Louisiana PSC's AT&T Arbitration proceeding, AT&T represented that it "does not object" to the use of CSAs for local services. App. Vol. C-2, Tab 160, Tr. at 352 (testimony of AT&T's Sather). Nevertheless, contradicting its position in state proceedings, AT&T now

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<sup>33</sup> See MCI v. AT&T, 114 S. Ct. 2223, 2233 (1994) ("[W]e doubt if it makes sense, if one is concerned about the use of filed tariffs to communication pricing information, to require filing by the dominant carrier, the firm most likely to be a price leader"); id. (noting that "Court . . . has policed . . . rate bureaus under the antitrust laws precisely because the sharing of pricing information can facilitate price fixing") (citations omitted); Order, Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier, 11 FCC Rcd 3271, 3313-15, ¶¶ 79-83 (1995) (noting AT&T's potential status as "price leader" and that such "concerns" should be "addressed by removing regulatory requirements that may facilitate such conduct, such as the longer advance notice period currently applicable . . . to AT&T").

suggests that a recent ruling by this Commission about customer-specific interstate offerings calls into question the propriety of customer-specific local arrangements under state law. AT&T at 64-65 (citing Order, Southwestern Bell Tel. Co., FCC 97-394, CC Docket No. 97-158 (Nov. 14, 1997)). AT&T ignores that the Commission's application of Title II of the Communications Act to interstate services does not bear upon the lawfulness of LECs' retail prices for local services — which are governed by state law under section 2(b) of the Communications Act and not even arguably implicated by sections 251 or 252 of the Telecommunications Act. See generally Louisiana Pub. Serv. Comm'n v. FCC, 476 U.S. 355, 370 (1986) (section 2(b) "fences off from FCC reach or regulation intrastate matters"). Nor could this Commission assert a form of indirect jurisdiction over local retail pricing by seeking to regulate local retail offerings under section 271, as BellSouth explained in its Application. See BellSouth Br. at 66-67, 87-88. Local retail pricing has long been at the very core of the Louisiana PSC's jurisdiction under the Communications Act, and nothing in the 1996 Act changed that.

#### **F. Miscellaneous Objections**

In addition to the recurring checklist issues addressed above, opponents raise miscellaneous objections to BellSouth's compliance with certain checklist items. Most of these claims are stale or untrue. Many are legally irrelevant to BellSouth's checklist compliance. Some are being addressed by BellSouth on an ongoing basis, in accordance with BellSouth's duties under sections 251 and 252 and its commitment to provide CLECs high-quality service. These claims and BellSouth's successful actions to address them establish two critical points. First, this Commission cannot expect local competition issues to be "resolved" anytime in the

foreseeable future. It would be folly to deny consumers the benefits of interLATA competition while waiting for stasis on issues that will never stand still. Second, BellSouth's record of addressing CLECs' legitimate concerns is extraordinarily good, and certainly sufficient to establish that the local market in Louisiana is open to competitors.

*1. Interconnection*

As the Louisiana PSC concluded, BellSouth satisfies the first checklist requirement by making interconnection available in accordance with sections 251(c)(2) and 252(d)(1) and the Commission's implementing regulations. Compliance Order at 6. See also BellSouth Br. at 37-42.

As part of its Application, BellSouth provided particularized details regarding these arrangements, including a copy of the collocation handbook BellSouth provides to CLECs and BellSouth's Physical Collocation Master Agreement. See Varner Aff. ¶ 51 & Ex. AJV-4 (BellSouth Collocation Handbook). MCI nevertheless objects that the Collocation Handbook leaves some charges for individual collocation arrangements to be worked out on a case-by-case basis. MCI at 64-65. MCI also questions the Louisiana PSC's decision to allow BellSouth to charge rates that reflect differences between collocation arrangements. MCI at 62. For its part, DOJ contends that the Louisiana PSC should have set uniform rates for physical collocation space preparation. DOJ at 27.

These professed concerns overlook that collocation is by definition an individual arrangement that must be tailored to the local network arrangements of CLECs and BellSouth. If every possible detail were addressed in a standardized document, that document would either be

overly restrictive for CLECs, or so lengthy and complicated that it would be unusable. Indeed, this Commission has recognized that collocation requests are rarely the same because interconnectors may "use different amounts of space, desire arrangements that require different amounts of time and materials to construct, or have different preferences regarding installation, maintenance, and repair by LEC personnel."<sup>34</sup> Nevertheless, BellSouth has established fixed per-unit rates for such items as power, cable installation, and security, in addition to its tariffed rates for such items as labor and materials. See Order, Review and Consideration of BellSouth's TSLRIC and LRIC Cost-Studies, Docket Nos. U-22022/22093, at Attach. 8-9 (LPSC Oct. 22, 1997) ("Pricing Order").

Whether fixed on a general basis or developed on a case-by-case basis, charges for BellSouth's collocation services are subject to state commission oversight. Establishment of such rates is squarely within the jurisdiction of the State commissions. Iowa Utils. Bd., 120 F.3d 794-95. Here, the Louisiana PSC has specifically determined that BellSouth's rates meet the standards of the Act and that ends any federal inquiry. Pricing Order at 3-4 & Attach. A at 8.

MCI, however, criticizes the methodology used to derive BellSouth's physical collocation rates. MCI at 62. If the Commission were to consider this argument on the merits, which it may not do under the Act's allocation of jurisdiction, it would find that the Louisiana PSC's determination of cost-based rates was correct, since BellSouth's cost studies for both

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<sup>34</sup>Report and Order and Notice of Proposed Rulemaking, Expanded Interconnection with Local Telephone Company Facilities, 7 FCC Rcd 7369, 7442, ¶ 158 (1992) (emphasis added).

physical and virtual collocation followed the same forward-looking methodology as its other cost studies. Caldwell Reply Aff. ¶ 48.

CLECs complain that the collocation process typically takes three to four months. KMC at 10; KMC's Walker ¶ 10; ACSI at 10. These CLECs ignore, however, that the time required to complete collocation is a result not of any delays on BellSouth's part, but rather of the fact that "each of BellSouth's central offices presents a unique set of circumstances." Milner Reply Aff. ¶ 3. CLECs also ignore that BellSouth will work on multiple collocation arrangements with the same CLECs concurrently, so that CLECs need not wait for one collocation job to be completed before beginning the next. Id. Indeed, many limitations on the pace of collocation are within the control of CLECs, who must decide how much equipment to deliver and at what pace.

With respect to other methods of interconnection, MCI suggests that BellSouth does not allow CLECs to interconnect at its local tandem switches. MCI at 65. This is false. See BellSouth Br. at 38 (citing Statement § I.A.1). In fact, MCI's affiant concedes that "BellSouth seems to allow interconnection at the local tandems" and that BellSouth interconnects with independent telephone companies at local tandem switches. MCI's Henry ¶ 27. Moreover, MCI's claim that BellSouth will not provide MCI with a list of local switches sub-tending local tandems, id. ¶ 9, are misleading. Milner Reply Aff. ¶ 45. MCI's complaint appears to arise from the fact that a single tandem was in the midst of being renamed in the BellCore Local Exchange Routing Guide ("LERG"), and this transition altered the results of BellSouth's data search. Id. BellSouth thereafter completed the database update and provided the missing information to MCI.

ACSI and ALTS's complaints about BellSouth's virtual collocation offerings are equally misguided. ACSI at 45; ALTS at 23. When ACSI requested virtual collocation, BellSouth made available all existing capacity and even added capacity to its Main Distribution Frame (MDF) — a "complicated, time consuming process." Milner Reply Aff. ¶ 4. ACSI and ALTS ignore BellSouth's efforts to accommodate ACSI's request by constructing additional facilities, and simply complain that collocation was not immediately available in precisely the tailored arrangement ACSI desired. Id.

Sprint's complaint that BellSouth does not permit it to co-mingle interLATA traffic and local traffic on the same trunks is essentially an effort to evade access charges. See Sprint at 52-54. By seeking to combine interLATA, intraLATA, and local traffic on the same trunks, Sprint proposes an arrangement that would make it impossible to render proper bills for BellSouth's trunking services or to implement federal and state access charge regimes. See Varner Reply Aff. ¶ 16 (noting need to distinguish different types of traffic for billing purposes). 47 U.S.C. § 251(g) specifically preserved the pre-existing federal access charge structure and the Commission has stated that interexchange carriers may not use the local competition provisions of the Act to evade this provision. See Local Interconnection Order, 11 FCC Rcd at 15862-64, ¶¶ 716-720, 15983-84, ¶ 980.

Finally, and contrary to MCI's allegations (MCI's Henry ¶ 28), BellSouth offers routing of local and intraLATA toll traffic over two-way trunk groups. Access traffic, as well as other traffic utilizing BellSouth's intermediary tandem switching function, can be routed via separate trunk groups. Varner Aff. ¶ 41.

2. *Unbundled Network Elements*

As already noted, opponents' principal objections to BellSouth's UNE offerings relate to pricing and the availability of UNE combinations — matters that have been resolved by the Eighth Circuit. See supra Parts III(A) & (B); BellSouth Br. at 42-50. Other arguments raised by the CLECs regarding this checklist item require substantially less discussion.

AT&T objects that if a CLEC requests a combination of network elements that duplicates an existing BellSouth service, BellSouth will not allow the CLEC to retain interstate access charges. AT&T at 25-28; Tamplin Aff. ¶¶ 14-17. As BellSouth has explained, this is simply another attempt to evade the Louisiana PSC's determination, backed by the Eighth Circuit's holdings, that where CLECs order end-to-end BellSouth services they are to be treated as resellers and thus do not receive access charges. See BellSouth Br. at 44-45; see also Local Interconnection Order, 11 FCC Rcd at 15982, ¶ 980 ("incumbent LECs continue to receive access charge revenues when local services are resold"). By contrast, where CLECs compete using unbundled network elements rather than resale, they are able to collect access charges. Varner Aff. ¶ 106, 114; Local Interconnection Order, 11 FCC Rcd at 15681-82, ¶¶ 362-63. This is true not just as a formal matter, but also as a practical matter. Contrary to AT&T's contentions, AT&T at 24-25, BellSouth currently provides CLECs with the information they need to bill their interexchange carrier customers for interstate access services when using unbundled network elements. Stacy OSS Aff. ¶ 106.

AT&T also objects that BellSouth does not provide CLECs with the information they would need to bill interexchange carriers for intrastate access charges. AT&T at 24-25; Tamplin

Aff. ¶ 18. Under normal conditions BellSouth would retain intrastate access charges. If AT&T objects to this practice, its objection would properly be raised with the Louisiana PSC. Varner Reply Aff. ¶ 17. This is an intrastate pricing issue reserved to the states and beyond this Commission's authority. Iowa Utils. Bd., 120 F.3d at 797-800; see also 47 U.S.C. § 2(b). AT&T's veiled request for federal intervention into policies regarding intrastate access charges must be dismissed.

MCI maintains that standardized arrangements, rather than the Bona Fide Request Process, should be available for unbundled transport with capacity greater than DS-1; interconnection via a meet-point arrangement; two-way trunking for exchange of local traffic; and forms of interim number portability other than remote call forwarding and direct inward dialing. MCI at 70; see also MCI's Henry ¶ 33 (discussing subloop elements of loop feeder and loop distribution).<sup>35</sup> Significantly, MCI has not actually requested these items or sat down with BellSouth to work out arrangements that suit MCI's needs; its arguments about potential delays from the Bona Fide Request Process are thus purely theoretical. See Varner Reply Aff. ¶ 3.

The items identified by MCI, moreover, may not be appropriate for a standardized offering at this time. The decision whether BellSouth will create a standardized service, feature

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<sup>35</sup> MCI's Henry ignores that BellSouth has included subloop elements as standard offerings in its Statement (§ IV.B.) so that MCI need not rely on the BFR process to receive those items. Varner Aff. ¶¶ 80-87. Mr. Henry appears to have repeated his accusations from South Carolina without examining BellSouth's Statement or application for Louisiana. Varner Reply Aff. ¶ 5.

or capability is based on a number of market-driven factors, such as demand. Varner Reply Aff.

¶ 4.

Finally, there is no basis for general allegations that use of a Bona Fide Request Process is inconsistent with the Act. Bona Fide Requests ensure that CLECs can work out new arrangements that meet their varied requirements as those requirements develop. See Varner Reply Aff. ¶¶ 3-5. After a CLEC has requested and received a “change” or “new” feature through this process, it will thereafter have access to that arrangement without resort to a new Bona Fide Request if such request is made within a reasonable amount of time. Id. ¶ 4. Moreover, once the Bona Fide Request process produces a technically feasible arrangement for one CLEC, all CLECs can obtain that same arrangement more quickly. Id. Typically when a CLEC requests an item that another CLEC has already obtained via the Bona Fide Request process, BellSouth will be able to respond to that request promptly, simply by informing the requester of pre-existing arrangements that are available. Id. It is only the first time that an arrangement is worked out — or where a CLEC requires a variation from the standard arrangements sought by other CLECs — that the process is likely to take the full ninety days allotted. Id.

MCI contends its ability to compete is “impaired” by not having access to BellSouth’s dark fiber. But as MCI concedes, the Louisiana PSC specifically determined MCI’s claim to BellSouth’s dark fiber finds no support in the Act. AT&T Arbitration Order at 43. The Act defines “network element” as facility or equipment “used in the provision of a telecommunication service.” 47 U.S.C. § 153(29) (emphasis added). “Dark fiber,” by contrast, is defined as fiber optic cable that is not connected to the electronic equipment necessary for its use in transmitting

signals. Dark fiber is — by definition — not “used” in the provision of a telecommunications service and thus is not a network element subject to the Act’s unbundling requirements. AT&T Arbitration Order at 43.

This Commission has specifically declined to require State commissions to mandate that incumbents provide access to dark fiber. See Local Interconnection Order, 11 FCC Rcd at 15722, ¶ 450. Indeed, dark fiber could no more be considered a “network element” than spare copper wire kept in a warehouse. The Act gives entrants no right to obtain access to BellSouth’s inventory.

3. *Nondiscriminatory Access to Poles, Ducts, Conduits and Rights-of-Way*

Section 271(c)(2)(B)(iii) requires BellSouth to provide nondiscriminatory access to poles, ducts, conduits, and right-of-way owned or controlled by BellSouth at just and reasonable rates in accordance with the requirements of section 224. As discussed in BellSouth’s opening brief, BellSouth’s agreements with PrimeCo, Sprint Spectrum, and MereTel (among other CLECs) provide such non-discriminatory access on terms that fulfill all statutory and regulatory requirements. See BellSouth Br. at 50. Nine CLECs in Louisiana have executed license agreements with BellSouth to attach facilities to BellSouth’s poles and place facilities in BellSouth’s ducts and conduits. See Milner Aff. ¶ 39. Given that BellSouth has for years provided cable television and power companies with access to poles, ducts, conduits and right-of-way in Louisiana, these arrangements are routine for BellSouth. Id. ¶¶ 39-40.

The Louisiana PSC found that BellSouth complies with this checklist item. No commenter disputes this conclusion. Therefore, the Commission should make an explicit finding

that BellSouth has satisfied checklist item (iii) by providing nondiscriminatory access to poles, ducts, conduits, and rights-of-way owned or controlled by BellSouth. If the section 271 application process is to have an end, the Commission must pass judgment on every checklist item, and limit the issues that may be raised in future applications by an applicant. Unless the Commission makes express, favorable findings on checklist items that are undisputed, CLECs interested in thwarting interLATA competition will withhold arguments in each proceeding, in order to raise these arguments in a subsequent filing by an applicant. Encouraging such sandbagging would not serve the interests of this Commission, the state commissions, or consumers who rely upon the section 271 process to foster both long distance and local competition.

#### 4. *Loops*

Certain claims regarding BellSouth's offerings of local loops are so vague and unsupported that the Commission cannot possibly assess them, let alone accept them as true. For example, WorldCom alleges service interruptions during loop cut-overs, without providing even the most basic details, such as the state in which these problems allegedly occurred.

WorldCom's Ball ¶ 18; see also Intermedia at 7 (alleging refusal to provide data circuits).<sup>36</sup> Such bare accusations, moreover, cannot overcome hard data, such as BellSouth's study showing that as of June 20, 1997, of the 325 loops ordered and delivered to ACSI in Georgia, 98 percent were cut over within 15 minutes. Milner Aff. ¶ 45; see also Milner Reply Aff. ¶ 6.

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<sup>36</sup> It should be noted that as of September 30, 1997, BellSouth had not received a single request for an unbundled local loop in Louisiana. Milner Aff. ¶ 41.

Sprint likewise complains vaguely that BellSouth has in some instances provided fewer unbundled loops than Sprint requested and that Sprint customers have experienced degradation in service. Sprint at 33. WorldCom also complains that one of its customers experienced outages during April of 1997 that stemmed from problems in a BellSouth central office. Because neither Sprint nor WorldCom have given information sufficient to identify these orders, neither BellSouth nor the Commission is in a position to evaluate these claims. As Mr. Milner explained in his opening affidavit (at ¶ 46), Sprint's complaints (at 32) here, and before the Florida PSC, regarding loop cutovers, have long since been resolved. Milner Reply Aff. ¶ 6.

Several commenters argue that CLEC customers have experienced disconnection when changing local carriers. AT&T at 15-17; ACSI at 25-26; ALTS at 22. As is explained in the attached Reply Affidavit of Keith Milner, whenever a CLEC uses BellSouth-provided UNEs to provide local service, disconnection of the customer's existing service is technically necessary in order to make the changeover. Milner Reply Aff. ¶ 8. This disconnection is short-lived: If the CLEC so requests, BellSouth stands ready to perform such work within a fifteen minute interval. Id.

In other instances, opponents argue that BellSouth should be excluded from the long distance business because of past problems with cut-overs that have been cured. ACSI, for example, points to cases in which customers experienced loss of service for several hours, rather than the five minute standard interval included in the BellSouth/ACSI Agreement. See ACSI at 25-28; see also Sprint at 32-33; Sprint's Closz ¶¶ 59-76. MCI alleges that 17 out of 540 MCI customers in BellSouth's region (about 3 percent) experienced significant loss of dialtone during

cutovers. MCI at 24; MCI's King ¶ 185. These problems were experienced in late 1996 and early 1997, before BellSouth took corrective action. Milner Aff. ¶¶ 46-48; see Milner Reply Aff. ¶¶ 6-7. Since the "corrective action" was put in place in early 1997, "no further customer problems of this type have occurred." Milner Reply Aff. ¶ 7. In any event, these problems do not undermine BellSouth's record of thousands of successful loop cut overs throughout its region. See Milner Aff. ¶ 46.

CLECs also ignore that if a CLEC is not satisfied with BellSouth's arrangements to reduce outage time, it is free to request arrangements that virtually eliminate outage time. By requesting basic service level 2, which includes manual order coordination as part of the basic service, the CLEC will obtain a specific conversion time from BellSouth and an assurance from BellSouth that the work will be completed within fifteen minutes of that assigned time. Milner Reply Aff. ¶ 8. Alternatively a CLEC could choose to resell BellSouth's service until it has assembled the unbundled network elements necessary to replicate BellSouth's service, and then simply disconnect BellSouth's service without any outage. Id. ¶ 9. Of course CLECs need not pursue such measures in order to ensure that cut-overs run smoothly, as BellSouth has taken corrective action to remedy any problems that arose in the past. Id. ¶ 10.

Intermedia claims that BellSouth will not provide loops that Intermedia requested in order to provide Frame Relay service. Intermedia at 6-7.<sup>37</sup> This is simply wrong. BellSouth and

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<sup>37</sup> Contrary to this Commission's requirements, see Public Notice at 6, 7 (Sept. 19, 1997), Intermedia seeks to incorporate facts by reference. See Intermedia at 6. Even though these allegations thus are not properly before the Commission, BellSouth nonetheless addresses them here.

Intermedia have determined and agreed upon the loop types and subloop elements required to provide Intermedia's Frame Relay service, and BellSouth stands ready to provide them as soon as Intermedia requests. Milner Aff. ¶ 42; see Milner Reply Aff. ¶ 17. Nor is there any merit to Intermedia's complaint that BellSouth customers receive DS-1 circuits before similar circuits ordered by Intermedia. Intermedia Ex. 1 at 22. Such circuits often require special facilities or the adaption of existing facilities. Milner Reply Aff. ¶ 12. Variances in provisioning times are thus to be expected. Intermedia has singled out one incident of alleged delay and ignored the fact that BellSouth has provided thousands of such circuits to CLECs without customer complaints. Id.

Finally, critics complain that BellSouth's loop prices are too high to allow competition for local residential service (if one improperly ignores, as the critics do, the additional revenues CLECs will earn from toll, access, and vertical services). ACSI at 16-20. As explained earlier, the Louisiana PSC's approval of BellSouth's loop rates as cost-based in accordance with the Act is determinative. See supra Part III(A). In any event, comparisons between loop rates and BellSouth's retail residential rates (as set by the Louisiana PSC) say nothing about BellSouth's compliance with the cost-based pricing standard established by section 252(d)(1).

#### 5. *Unbundled Local Transport*

BellSouth has demonstrated and the Louisiana PSC has confirmed that BellSouth makes available unbundled local transport in accordance with checklist item (v) at rates that satisfy the pricing requirements of the Act. See BellSouth Br. 52-53. BellSouth makes available dedicated

and shared transport between end offices, between tandems, and between tandems and end offices. See Varner Aff. ¶¶ 102-106; Milner Aff. Ex. WKM-9.

MCI raises the only objection to BellSouth's satisfaction of this checklist item, arguing that BellSouth has not demonstrated through actual commercial use that it can provide unbundled trunks in a timely and nondiscriminatory fashion. MCI's Henry ¶ 40. MCI is simply seeking to interject a requirement that BellSouth demonstrate that CLECs are actually taking its unbundled local transport, an argument this Commission has properly rejected. See Michigan Order ¶ 114. Moreover, as to dedicated transport, MCI's argument is meritless on its own terms. CLECs currently use 22 unbundled dedicated local transport trunks in Louisiana. Milner Aff. ¶ 51; Milner Reply Aff. ¶ 19. While no CLEC has ordered shared transport in Louisiana, it should be noted that CLEC usage cannot be quantified as MCI suggests, MCI's Henry ¶ 40, because trunks are shared by different users at different times. Milner Aff. ¶ 52.

6. *Unbundled Local Switching*

BellSouth has put in place procedures for ordering, provisioning, and maintenance of unbundled local switching. BellSouth Br. at 53-55. BellSouth provides CLECs with technical descriptions of these offerings. Milner Aff. ¶ 54. Indeed, while MCI suggests that BellSouth has failed to demonstrate the availability of switching, MCI at 67, actual market experience shows that CLECs which are ready to place orders are using BellSouth's unbundled switching services successfully. Milner Aff. ¶ 54; Milner Reply Aff. ¶ 20.

AT&T contends that BellSouth is refusing to provide customized or "selective" routing. AT&T at 29-30; AT&T's Tamplin ¶¶ 47-51. In fact, as BellSouth has indicated to AT&T, it is

ready to provide such routing through line class codes where sufficient codes are available.

Milner Aff. ¶ 55; Milner Reply Aff. ¶ 25. Although no CLEC has requested such routing in Louisiana to date, Milner Aff. ¶ 55, BellSouth has finished its work to furnish customized routing in Georgia where AT&T requested that work. Id. AT&T has simply not taken the service. Id. Selective routing using BellSouth's Advanced Intelligent Network ("AIN") platform soon will be available, id. ¶ 56, and the Louisiana PSC has required that BellSouth offer the service in Louisiana upon successful completion of the service trials. Compliance Order at 5.

AT&T also incorrectly argues that BellSouth is not capable of converting more than 100 existing AT&T resale customers to customized routing per business day. AT&T at 30.

Although BellSouth once offered to convert AT&T's resale customers manually, and this process would have imposed volume limitations, BellSouth has since developed electronic processes for AT&T to use in converting its resale customers to customized routing. Milner Reply Aff. ¶ 27. Under this electronic process there is no limit on the number of customers AT&T can convert in a day. Id.

AT&T's attack upon the Statement's provisions regarding CLEC access to vertical features is also without legal basis. See AT&T at 28-29. The Louisiana PSC specifically determined that "[v]ertical switching [services] such as call I.D., call forwarding and call waiting are network elements that are subject to [the] unbundling requirements of the Act." Compliance Order at 11. Accordingly, CLECs may freely determine which vertical features they wish to activate in connection with unbundled switching ports. Rates for those vertical features were established by the PSC in its Pricing Order. Varner Aff. ¶ 116. And, contrary to AT&T's and

MCI's contentions, AT&T at 24-25; MCI at 63, the Louisiana PSC's approval of BellSouth's switching rates as cost-based in accordance with the Act is determinative. See supra Part III(A).

Nor is there any merit to AT&T's contention that BellSouth refused to process orders for Call Hold and 900 number blocking. Milner Reply Aff. ¶¶ 22-23. As soon as AT&T indicated that it wanted 900 number blocking separated from 976 blocking, BellSouth worked with AT&T to accommodate this request and conclude an agreement. Id. ¶ 22. BellSouth also indicated to AT&T that it would be willing to provide Call Hold as a "stand alone" feature as long as it is technically feasible, but AT&T has not yet tried to work out a technically feasible method of providing it. Id. ¶ 23.

BellSouth's billing system for unbundled network elements is capable of mechanically generating bills for unbundled elements that contain a local usage element, such as unbundled local switching and unbundled tandem switching. Milner Aff. ¶ 58.

7. *911, E911, Directory Assistance, and Operator Call Completion Services.*

Few concerns have been expressed about BellSouth's satisfaction of checklist item (vii). And the few objections raised are entirely without merit. MCI, for instance, contends that BellSouth has informed CLECs they will be unable to access BellSouth's entire directory assistance database but only that part containing listings for BellSouth's customers and certain other independent LECs. MCI at 68. This is simply wrong. As BellSouth stated in its Application, BellSouth will include facilities-based and reseller CLECs' customers in the BellSouth directory assistance database, and will offer interested CLECs access to the entire database. Varner Aff. ¶¶ 130-131. Approved rates for these services are included in Attachment

A of BellSouth's Statement. BellSouth has, however, honored requests from independent LECs not to provide listings to individual CLECs until they reach an agreement with that CLEC. BellSouth believes this is a matter to be resolved between the CLEC and the independent LEC. Varner Reply Aff. ¶ 15. Unless a LEC has explicitly requested that BellSouth not provide its listings, however, BellSouth makes the listings of that local service provider available to MCI and other CLECs. Id.

Cox's concerns about access to the 911 database are equally unfounded. Cox at 12. Contrary to Cox's contention, BellSouth updates CLECs' customers' listings in the 911 database on a nondiscriminatory basis. Varner Aff. ¶ 121-126; Milner Aff. ¶ 62. Following the initial addition of CLEC entries in the 911 database, subsequent data submitted by CLECs is processed daily and any errors found are faxed back to CLECs with instructions on the corrections that are required. Milner Reply Aff. ¶ 30. Moreover, CLECs can transmit information to be included in the 911 database either manually or electronically, at their option. Id.

AT&T raises concerns about its ability to obtain unbranded operator services and directory assistance. See AT&T at 30-31; Tamplin Aff. ¶¶ 64-69. These concerns are addressed by AT&T's ability to obtain customized routing using line class codes (and shortly, AIN), as discussed above. Varner Aff. ¶ 129 (noting that BellSouth provides customized routing using line class codes free of charge); see also Milner Reply Aff. ¶ 28 ("selective routing capabilities, discussed . . . in my original affidavit (at paragraphs 55-56), allow a CLEC to route calls from its customer to the CLEC's operator services and directory assistance platforms"). In addition, BellSouth is offering CLECs access to unbranded or CLEC-branded directory assistance and